

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 81

[FRL-XXXX-X]

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to Reopen Comment Period.

SUMMARY: The EPA is reopening the comment period for the notice of proposed rulemaking (NPR) that was published on October 25, 1999 (64 FR 57424) regarding the rescinding of findings made by EPA that the 1-hour national ambient air quality standard (NAAQS) for ozone no longer applies in certain areas and which was further clarified on November 18, 1999 (64 FR 63002). The October 25 proposal established a 30-day comment period, which ended on December 1. The EPA believes this provided an adequate opportunity to comment on the specific issues identified in the proposal. However, in response to requests from the public, EPA is reopening the comment period to January 3, 2000.

DATES: The EPA is reopening the comment period to end on January 3, 2000, which is 30 days after the date today's notice was signed and made available on EPA's web site at <http://www.epa.gov/airlinks>. Comments must be postmarked by the last day of the comment period and sent directly to the

Docket Office listed in ADDRESSES (in duplicate form if possible). Please refer to the SUPPLEMENTARY INFORMATION section for additional information on the comment period.

ADDRESSES: Comments may be submitted to the Office of Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-99-22, U.S. Environmental Protection Agency, 401 M Street SW, room M-1500, Washington, DC 20460, telephone (202) 260-7548. Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTARY INFORMATION of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Annie Nikbakht, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD-15, Research Triangle Park, NC, 27711, telephone (919) 541-5246.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under docket number A-99-22 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ADDRESSES at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-99-22. Electronic comments on this NPR rule may be filed online at many Federal Depository Libraries.

Additional information relevant to this proposed rulemaking is available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) via the web at <http://www.epa.gov/ttn/>. If

assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC.

I. Re-opening of Comment Period

The EPA has received requests to reopen the comment period on the proposal that the 1-hour NAAQS no longer applies in certain areas. See Docket A-99-22, nos. ___ (Hunton & Williams, representing the Utility Air Regulatory Group) and nos. ___ The Chamber of Commerce of the United States, William L. Kovacs. This notice responds to those requests. The commenters identified an administrative error in docketing the list of areas affected by the proposed rule. The EPA acknowledges that the list of areas was inadvertently not placed in the proper docket at the time the proposed rule was published in the Federal Register. The EPA has corrected this docketing problem and the list of affected areas is now available in the docket. The EPA is providing an additional 30 days for the public to comment on the proposed rule now that the list of affected areas is available in the docket.

One commenter also requested that EPA reopen the comment period to allow comments on issues identified in a Stipulation to Stay Proceedings in a legal challenge to EPA's revocation of the 1-hour ozone standard in certain areas. Environmental Defense Fund v. Browner, No. 98-1363,

D.C. Cir., filed August 3, 1998. The issues identified in the Stipulation were as follows: (1) The proposal to modify 40 C.F.R. § 50.9(b) to provide that after the 8-hour ozone standard "become[s] fully enforceable under part D of title 1 of the Clean Air Act (CAA) and subject to no further legal challenge," the 1-hour standard will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard; (2) whether a "fully enforceable" 8-hour standard means that CAA section 107(d) designations for ozone under the 8-hour standard will have been promulgated by the Administrator prior to any determination that the 1-hour ozone standard no longer applies to an area; (3) whether the motor vehicle emission budget approved or found adequate for the purpose of implementing the 1-hour ozone standard in a nonattainment area will remain in effect for transportation conformity purposes during the period after the 1-hour ozone standard no longer applies to the area but before a motor vehicle emission budget is approved or found adequate for the purpose of implementing the 8-hour ozone standard; (4) whether the rescission of the nonapplicability determinations for certain areas should apply retroactively as well as prospectively; and (5) in the event EPA determines that the rescission will not apply retroactively, whether EPA will provide other relief to remedy any

additional air pollution that may result from stationary sources and/or highway projects approved during the regulatory hiatus when the area's section 107(d) designation was not "nonattainment." The EPA believes that all of these issues were within the scope of the original proposal. The EPA included this list of issues in the Stipulation at the request of the litigants. The EPA agrees that all of these issues are within the scope of this rulemaking and thus are open for public comment during the reopened comment period.

II. Public Hearing

One commenter also requested that EPA hold a public hearing in connection with this proposed rule because the rule was allegedly subject to the public hearing requirements of section 307(d) of the CAA as a revision to a NAAQS under section 109 of the CAA. The EPA does not agree with the commenter. As EPA stated in the proposed rule, EPA was merely changing a rule that indicated when standards would be applicable, and was not revising the standards themselves. For this reason, EPA believes that the proposal is not subject to the public hearing requirements of section 307(d) and is not providing a public hearing on the proposal.

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated:

Robert Perciasepe,
Assistant Administrator for
Air and Radiation.